

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID MANSFIELD,

Plaintiff,

vs.

No. CV 19-00403 JCH/GJF

UNIT MANAGER ARMENDARIZ, and
WARDEN PETERS,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the Prisoner's Civil Rights Complaint filed by Plaintiff David Mansfield, on April 29, 2019. (Doc. 1). The Court dismisses this case without prejudice for failure to comply with statutes and Court Orders and failure to prosecute.

Acting *pro se*, Plaintiff David Mansfield filed this civil rights proceeding under 42 U.S.C. § 1983 on April 29, 2019. At the time he filed his Complaint, Mansfield was a prisoner incarcerated at the Southern New Mexico Correctional Facility. (Doc. 1 at 1). Plaintiff did not pay the \$400.00 filing fee. On April 29, 2019, Mansfield also filed a Prisoner's Motion and Affidavit to Proceed Under 28 U.S.C. § 1915. (Doc. 2). The Court granted Mansfield leave to proceed without prepayment of fees or costs, and ordered Mansfield to make an initial partial payment of \$6.86 under 28 U.S.C. § 1915(b) on May 3, 2019. (Doc. 3). The May 3, 2019 Order directed Mansfield to pay the initial partial payment of \$6.86 or demonstrate why he should be relieved of the obligation to make the payment within 30 days of entry of the Order. (Doc. 3).

More than 30 days elapsed after entry of the May 3, 2019 Order, and Plaintiff Mansfield did not pay the initial partial payment or otherwise respond to the Order. The Court then entered an Order to Show Cause on June 17, 2019. (Doc. 4). The Order directed Plaintiff Mansfield to show cause why the case should not be dismissed for his failure to make the initial partial payment required by 28 U.S.C. § 1915(b) and the Court's May 3, 2019 Order. (Doc. 4). Plaintiff Mansfield did not make the initial partial payment, show cause, or otherwise respond to the Court's June 17, 2019 Order to Show Cause.

When a prisoner is granted leave to proceed *in forma pauperis*, § 1915 provides:

"The court **shall** assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal."

28 U.S.C. § 1915(b)(1) (emphasis added). Plaintiff's 6-month inmate account statement shows that Plaintiff had an account balance sufficient to pay the initial partial payment, but spends his money on commissary purchases. (Doc. 2). *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997). "[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he should not be excused for failing to pay the initial partial filing fee." *Baker v. Suthers*, 9 F. App'x 947. 949 (10th Cir. 2001). Plaintiff Mansfield has not paid the \$6.86 initial partial payment or shown cause why he should be relieved of the obligation to pay.

Pro se litigants are required to follow the federal rules of procedure, statutes, court orders, and simple, nonburdensome local rules. *See Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980). The Court's May 3, 2019 and June 17, 2019 Orders directed Plaintiff Mansfield to make the required partial payment under § 1915(b)(1) or show cause why the payment should be

excused. (Doc. 3, 4). Plaintiff Mansfield has failed to make the initial partial payment, to comply with the Court's Orders, and to prosecute this case. The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute or to comply with statutes, the rules of civil procedure, local rules, or court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). The Court will dismiss this case for Plaintiff's failure to comply with 28 U.S.C. § 1915(b), and the Court's May 3, 2019 and June 17, 2019 Orders and for failure to prosecute this proceeding.

IT IS ORDERED that Prisoner's Civil Rights Complaint filed by Plaintiff David Mansfield, on April 29, 2019 (Doc. 1) is **DISMISSED** without prejudice under Fed. R. Civ. P. 41(b) for failure to comply with 28 U.S.C. § 1915(b), failure to comply with the Court's May 3, 2019 and June 17, 2019 Orders, and for failure to prosecute this proceeding.



John C. H.
UNITED STATES DISTRICT JUDGE